



CITY COUNCIL WORK SESSION AGENDA

Monday, April 18, 2016 - 12:00 PM

Conference Room A - 169 SW Coast Highway, Newport, Oregon 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER

2. DISCUSSION / ACTION ITEM

2.A. Interviews of Applicants for the Planning Commission Vacancy, Term Expiring 12-31-18

[City Manager Report and Recommendation-Work Session-Planning Commission Interview.pdf](#)
[Planning Commission Applications.pdf](#)

2.B. Work Session on Local Improvement District (LID) Implementation Strategies

[Worksession Cover Memo](#)
[PowerPoint Presentation](#)
[Draft Comprehensive Plan Policies](#)
[NMC Chapter 12 Draft Amendments](#)
[Implementation Strategy](#)
[Newport LID FAQ](#)

3. ADJOURNMENT

CITY MANAGER'S REPORT AND RECOMMENDATION



Agenda #:2.A.
Meeting Date: 4-18-16

Agenda Item:

Interviews for Planning Commission

Background:

The City Council is scheduled to fill one position that is done after an interview with the City Council. This is for a member of the Planning Commission to serve through December 31, 2018. There are three applications for this position. The appointment to the Planning Commission is by the Mayor, subject to confirmation by the City Council.

The names of the Planning Commission applicants are as follows: Karmen Vanderbeck, Marvin Straus, and James Hanselan.

Recommendation:

None.

Fiscal Effects:

None.

Alternatives:

None recommended.

Respectfully Submitted,

Spencer R. Nebel, City Manager

Cindy Breves

From: CommitteeApp@newportoregon.gov
Sent: Tuesday, February 23, 2016 7:55 PM
To: Cindy Breves; Peggy Hawker
Cc:
Subject: Committee Application

Application for City Council - Email Application

Date: 2/23/2016

Commission/Committee of Interest: Citizens Advisory Committee

Name: Karmen Vanderbeck

Address: :

Newport, OR 97365

Workphone: :

Homephone: :

Email: :

Occupation: Banker

Employer: Columbia Bank

Why do you want to serve on this committee/commission/board/task force, and how do you believe you can add value? My family has resided in Newport since 1985- I have lived here since 2005. I believe it is tremendously important to always give back to the community you live in. As such, I have tried to be as involved with our community as possible. I have served as a Field Staff Officer Secretary for the USCG FL54 Yaquina Bay Station (5 years). I also served on the Board of the Friends of Yaquina Lighthouses for 4 years. I served on the Hospital Foundation Committee for special events (including the Festival of Trees) for many years. I have been in the financial services industry for over 40 years. As a banker in this community for the past 10 years, I have served a large number of personal customers and business owners.

What is a difficult decision you have made concerning issues of bias and/or issues of conflict of interest? As a banker, you make difficult decisions each day. Although there are some occasions when we cannot say "yes" to a customer, a "no" is always respectful of their position and always tries to provide the customer with other options to assist. The hardest decisions though most often relate to employees. At all times, we remove our personal feelings from any of these conversations and determine what is best for the bank first; then we decide how we can coach the employee to succeed or, in some cases, terminate them. Bias is not an acceptable word to a banker.

Describe the process of how you make decisions. I make decisions by: learning as much as I can about the situation; I ask questions and take notes; I listen to other input from team members. If I have an opinion I offer it and then wait for other team members to provide their opinions. If all of us are honest and objective a consensus of the best decision is usually reached.

What do you think about consensus decision making? What does the consensus decision making process mean to you? I guess it is probably obvious from my answer in number 3, that I think consensus decision making is a wonderful asset to a successful committee!

Describe all other pertinent information/background for this position. I believe I have provided all pertinent information.

Cindy Breves

From: CommitteeApp@newportoregon.gov
Sent: Tuesday, February 02, 2016 1:09 PM
To: Cindy Breves; Peggy Hawker
Cc:
Subject: Committee Application

Application for City Council - Email Application

Date: 2/2/2016

Commission/Committee of Interest: Planning

Name: Marvin Straus

Address:

Unit A-3

Newport

97365

Workphone:

Homephone:

Email:

Occupation: retired telecommunications manager

Employer:

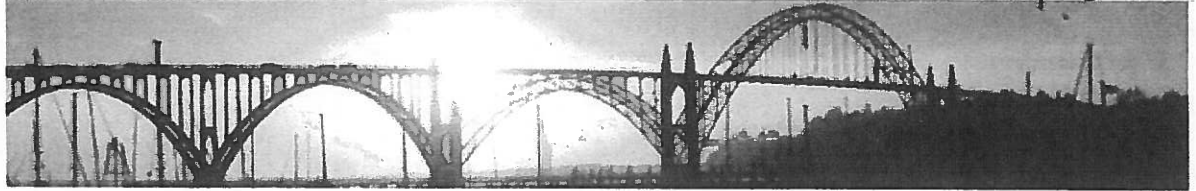
Why do you want to serve on this committee/commission/board/task force, and how do you believe you can add value? Donating my time, skills, and experience to the City of Newport and the Planning Commission would enable me to "give back" to my community.

What is a difficult decision you have made concerning issues of bias and/or issues of conflict of interest? I was the chair to T1Q1-A US Dept of Commerce Standards Committee, working on audio standards. If a company's algorithm was accepted, it prospered. If its algorithm was not accepted, it could have gone bankrupt. I tried to run the committee with an even hand, giving all parties the opportunity to present their case, and then tried to encourage members to make a fair and expeditious decision.

Describe the process of how you make decisions. 1) Define the problem.
 2) Reach out for all points-of-view on the problem.
 3) Gather data that is unrelated to the emotion of the issue.
 4) List all of the possible solutions, their details, and their pros and cons.
 5) Make the decision.

What do you think about consensus decision making? What does the consensus decision making process mean to you? Consensus must be part of the decision making process.

Describe all other pertinent information/background for this position. I am a home owner in Newport. My background is electronics and computers. Although I do not have an engineering degree, I have worked for Bendix Field Engineering, NASA, and the Bell System. I hold a patent for measuring motion artifacts in digitally compressed video. Before I retired in 1993, I was a Member Of Technical Staff for U S West Advanced Technologies in Boulder, Colorado. My occupational ethic is work well with others while accomplishing the task at hand.

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Application](#)

Application for Commission/Committee Appointment

Please complete the form below and click the "Submit" button at the bottom of the page.

Date	2/5/2016
List the Commission/ Committee of interest:	Planning Commission
Name:	James Hanselman
Address:	Newport, OR 97365
Work Telephone Number:	
Home Telephone Number:	
Email Address:	
Occupation:	Retired
Employer:	
(1) Why do you want to serve on this committee/commission/board/task force, and how do you believe you can add value?	please see attachment
(2) What is a difficult decision you have made concerning issues of bias and/or issues of conflict of interest?	
(3) Describe the process of how you make decisions.	

1. I have lived to see the evolution of my family farm in an entirely agricultural area to the current residential housing developments with very few farms. Subsequent complaints of animal smells and farm equipment working before sunrise and after sunset resulted in bad relations.

My home town went vertical with housing options after parcels for housing had all but disappeared. However, when 15 story buildings started to appear right next to the old victorian houses of the city center and eliminated views and even sunlight from the old neighborhoods, the troubles began. There was the loss of "neighborhood."

This same town designated certain areas of the city as "historic districts" in an attempt to preserve the character of these areas and the town overall. A good idea but the policies now require that ALL exterior work on these houses must first be submitted to a committee for approval. Whether it is repair, renovation, additions or new construction, the homeowner must meet strict standards. This includes design, color, door and window style and building materials. If you are a resident of the neighborhood who was against the historic designation, you still must conform. People don't like personal choice removed.

Policy in these cases missed important issues that should have been predicted and discussed before the decisions made.

I will be a commissioner who will work for the best solution for members of the community, and I have some experience with policy development. I was sought out for many committees in my former school district. This is a 17,000 student district. My high school was 3000+ students. Ann Arbor, Michigan, is home to a major university and is a wonderfully diverse, rich multicultural community. Establishing policies that work for all students and parents was remarkably challenging.

Some of the more difficult challenges requiring policy were:

Religious holidays accommodating three religions and subsequent restrictions on teachers and teaching on these holidays.

Graduation requirements

Athletic eligibility requirements

Student cell phone use

Principal selection

To develop policies for a school or a school district is not much different from doing the same for city government. There are few people more passionate about rules than parents. I am sure that my experiences and skill set will serve me well if selected for this position.

2. I am a retired teacher. I taught for 30 years, primarily college prep biology. I chose to require essays on all my tests. I graded on the basis of a student's demonstrated mastery of scientific principles involved in the test scenario provided. Subjective test questions will bring grading bias accusations from time to time. Even the best essay question that I could write could result in unexpected answers. What I best learned from these experiences with students and parents was that listening may be the toughest skill to develop. People are not at their best when upset, and talking at one another seldom resolves the issue. Learning to use the right words and explain in multiple ways the methods of my grading system was crucial if all parties were to get to understanding.

3. I study all the data available and ask questions where clarity or my understanding is not complete. This includes listening to all stakeholders voicing their concerns. I then look for all actions that are possible and the outcomes of those actions. After weighing the outcomes along with the value/cost to the community, I make a decision.

4. For committee work and policy making, I believe that consensus decision making is critical. Group members should want consensus solutions. When the concerns of all members are addressed, the solution or decision arrived at can be fully supported by the group. I think that is what the public would like....a commission that formulates fair policy which addresses community needs.

5. I have lived in Newport for 10 years now during which I have learned about our wonderful city and its growing needs. I come from a trade family, and mine was the first generation to attend college. I have seen development done well and done poorly. I have seen proposed policies that have scared residents and have worked as a citizen to modify these same proposals or eliminate them (hazard zones here in Newport is an example). I have also worked with commissions to get natural areas set aside. I see the North Newport Urban Renewal project on the horizon and am most interested in participating as a commissioner on this important plan.

Memorandum

To: Newport City Council

From: Derrick Tokos, Community Development Director



Date: April 14, 2016

Re: Newport Local Improvement District Implementation Strategies

At this work session, Council members will have an opportunity to review and discuss model policies, codes and informational materials that have been developed to help make Local Improvement Districts (LIDs) a more effective and publicly acceptable financing tool for needed infrastructure improvements. This effort was funded by a Transportation Growth Management (TGM) grant that the City secured from the Oregon Department of Transportation. The state's consultant, Todd Chase with FCS Group, will be attending the works session to field questions about the work product and process.

Included with your meeting materials are the following documents:

- Project Overview PowerPoint Presentation
- Draft Comprehensive Plan Policies
- Draft Municipal Code Amendments (for reference)
- Implementation Strategy Report (for reference)
- Local Improvement District FAQ (for reference)

The draft Comprehensive Plan policies are scheduled for a public hearing at the Council's evening meeting. The municipal code amendments will be presented at a future Council meeting. The other materials are provided for context, and don't require any formal action on the Council's part (although comments are welcome).

I look forward to the discussion on Monday!



Newport LID Implementation Strategy

Derrick Tokos, City of Newport

April 18, 2016
City Council Work Session

Project Funded in part from ODOT/DLCD Transportation Growth Management Program

Presentation Contents

- ◆ **Introduction**
- ◆ **Project Purpose**
- ◆ **Project Methodology & Approach**
- ◆ **Policy Recommendations**

Project Purpose

- ◆ **Analyze LIDs as a funding source for Newport and other small to medium size cities and counties in Oregon.**
- ◆ **Prepare Comprehensive Plan and Municipal Code amendments to ensure that Newport's LIDs comply with applicable state laws and are consistent with municipal resources.**
- ◆ **Identify metrics by which municipalities can analyze costs and benefits of an LID.**
- ◆ **Create an interactive LID assessment “tool” to efficiently formulate equitable LIDs.**
- ◆ **Provide FAQ handout**

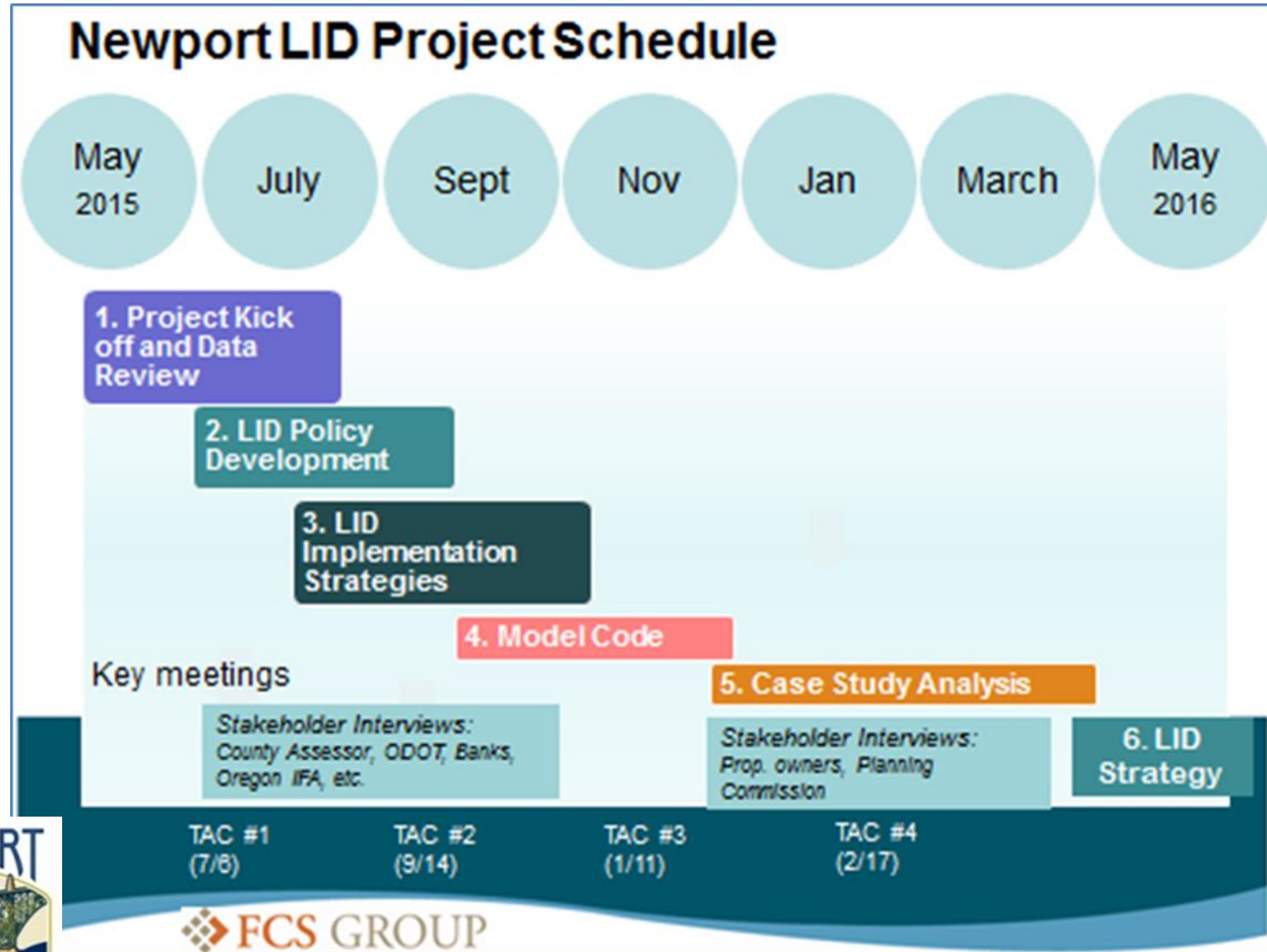


What is an LID?

- ◆ **LID is a funding mechanism for public facilities (roads, water, sewer, etc.) in which the property owners in a “benefit district” are assessed a portion of the cost of a new capital improvement.**
- ◆ **May be initiated either by: (1) a petition submitted by a majority of the property owners (approved by city council); or (2) by a vote of the city council.**
- ◆ **Once initiated, the municipality or private developer usually incurs debt to finance the LID project.**
- ◆ **This debt is paid as property owners within the district make payments to the city on their special assessment.**



Project Methodology & Approach



LID Assessment Tool

Using property data from Newport's case studies, FCS Group developed a tool which provides the user with:

- ◆ Project Costs
- ◆ Funding Sources
- ◆ Property Benefits
- ◆ Allocation techniques
- ◆ Performance Metrics



Oregon Local Improvement District Model
Model Dashboard

Instructions

Enter LID Name:

Golf Course Drive

Enter Analysis Date:

2/29/2016



Font key:

Blue text on a white background indicates that a cell is intended for user input.

Black text on a gold background indicates that a cell is calculated based on user input and should not be manipulated.

Blue, underlined text indicates a link that will take the user to a different page.

White text on a brown background indicates a cell is a heading meant to describe the cells under it.

Red text indicates instructions to instruct the user on how to use an aspect of this model.



Newport LID Case Study Areas

Coho-Brant LID Case Study Preliminary Assumptions

- ◆ Project Includes: **Paving unimproved roadway**
- ◆ Project Cost est. (2016 dollars): **\$843,000**
- ◆ Potential Funding Sources: **LID and URD (50:50 split)**
- ◆ Project Area: **3.15 Acres**
 - Area subject to non-remonstrance: **36%**
- ◆ Number of Properties: **22**
- ◆ Existing Assessed Value: **\$1,927,411**
- ◆ Avg. LID Cost to Owners: **\$3.07 per SF**

Golf Course Drive LID Case Study Preliminary Assumptions

- ◆ Project Includes: **Water, Stormwater & Sewer and roadway resurfacing**
- ◆ Project Cost est. (2016 dollars): **Scalable**
- ◆ Potential Funding Sources: **LID and Other Local Funds (10:90 split)**
- ◆ Project Area: **11.65 Acres**
 - Area subject to non-remonstrance: **0%**
- ◆ Number of Properties: **44**
- ◆ Existing Assessed Value: **\$8,595,780**
- ◆ Avg. Cost to Owners: **TBD**



Recommended Comprehensive Plan Amendments

- ◆ **New Policy 6 to Public Facilities Element of the Comprehensive Plan providing guidance on how to utilize LIDs as a funding tool:**
 - Recommends that LIDs only be pursued for projects that are expected to enhance the value of the contributing properties.
 - Establishes maximum assessment thresholds to avoid unduly burdening land owners and to minimize financial risk to Newport in the event of default.
 - Provides instruction on how petition initiated LIDs should be evaluated.
 - Includes policy framework for when council-initiated LIDs should be pursued, including if the LID addresses chronically failing infrastructure and whether it leverage outside funds.
 - Provides administrative direction including long-term financial implications, public safety considerations and how LIDs should interact with city plans.



Recommended LID Code Amendment

◆ Recommendations Include:

- ❖ Methods to measure benefits of a given project
- ❖ What is included in Engineer's Report
- ❖ Project evaluation criteria
- ❖ Identifying outside funding sources
- ❖ Methods of assessing costs based on benefits
- ❖ Administrative cost recovery
- ❖ Risk mitigation techniques
- ❖ Property Owner outreach procedures

**For additional information please
contact:**

Derrick Tokos

Community Development Director
City of Newport

GOALS AND POLICIES

PUBLIC FACILITIES ELEMENT

GENERAL

Goal: To assure adequate planning for public facilities to meet the changing needs of the City of Newport urbanizable area.

Policy 1: The city shall develop and maintain public facilities master plans (by reference incorporated herein). These facility plans should include generalized descriptions of existing facilities operation and maintenance needs, future facilities needed to serve the urbanizable area, and rough estimates of projected costs, timing, and probable funding mechanisms. Public facilities should be designed and developed consistent with the various master plans.

Policy 2: In order to assure the orderly and cost efficient extension of public facilities, the city shall use the public facilities master plans in the capital improvement planning.

Policy 3: The city shall work with other providers of public facilities to facilitate coordinated development.

Policy 4: Essential public services should be available to a site or can be provided to a site with sufficient capacity to serve the property before it can receive development approval from the city. For purposes of this policy, essential services shall mean:

- > Sanitary Sewers
- > Water
- > Storm Drainage
- > Streets

Development may be permitted for parcels without the essential services if:

- > The proposed development is consistent with the Comprehensive Plan; and
- > The property owner enters into an agreement, that runs with the land and is therefore binding upon future owners, that the property will connect to the essential service when it is reasonably available; and
- > The property owner signs an irrevocable consent to annex if outside the city limits and/or agrees to participate in a local improvement district for the essential service.

Policy 5: Upon the annexation of territory to the City of Newport, the city will be the provider of water and sewer service except as specified to the contrary in an urban service agreement or other intergovernmental agreement.

Policy 6: Local Improvement Districts (LIDs) should be evaluated as a means of funding public facilities where the construction of such facilities is expected to enhance the value of properties that are adjacent or proximate to the planned improvements.

For LIDs in developed residential areas, the aggregate assessment amount within a prospective LID should be no more than 10% of the assessed value of properties within the boundaries of the proposed district. The aggregate assessed value may be higher for other types of LIDs, such as developer initiated districts; however, in no case should it exceed 50% of the assessed value of the affected property.

When considering a new LID, the City should proceed with preparing an engineer's report that sets out the likely cost of constructing the improvement.

Consideration should be given to bundling LID projects with other capital projects that the City secures bond funds to construct. For an LID to proceed, it must have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans regardless of the property-owners' repayment.

If an LID project is considered by the City Engineer to be a partial improvement (less than ultimate planned design), the City should require that interim improvements conform to current City standards in a manner which will allow for completion of the total facility at such time that resources are available.

New LIDs may be initiated by petition or resolution of the City Council.

Formation of an LID by Petition

The City Council shall evaluate new LIDs proposed by petition to determine if City resources should be expended to formulate an engineer's report. Only those projects with substantial public support should proceed. An LID petition that includes non-remonstrance agreements and/or petitions of support from property owners representing 75% of the benefited area shall be presumed to have substantial public support.

If an LID petition seeks to leverage other funding to achieve 100% of the project costs then the City Council should consider the likelihood of whether or not those funds will be available within the timeframe that they would need to be committed for construction.

When the City receives petitions for multiple LIDs, priority should be given to prospective LIDs with the highest level of documented support, as measured by recorded non-remonstrance agreements and/or petitions in the benefit area in question.

The cost of completing the engineer's report should be included in the total LID assessment. The City should update its fee schedule to include a non-refundable LID Application Fee to be paid by LID petitioner(s) for petition-initiated LIDs.

City Council Initiated LIDs

The City Council on its own motion or upon recommendation by the City Manager may initiate an LID without a petition. In doing so the City Council shall consider the following factors:

- Project purpose and need, including whether or not the improvement addresses an immediate health and safety risk or if it has been identified as a priority improvement in an adopted public facility plan.
- Whether the improvement will address existing deficient infrastructure that is chronically failing.
- Capital cost of the improvement.
- Project cost contingencies and related construction risk factors, such as the need to acquire new public right-of-way, unique construction challenges, or environmental issues.
- Nature of the area benefited, including its existing condition.
- The amount of potential non-LID funding that is expected to be leveraged by the LID, if any. This may include, but is not limited to, federal or state grants, sewer or other types of service charges, urban renewal funds, revenue or general obligation bonds, and reimbursement districts.
- Percentage of properties within the benefit area that have prerecorded non-remonstrance agreements or have owners that favor formation of an LID.

When considering multiple City-initiated LIDs, priority should be given to the LID that addresses the greatest number of factors identified above.

Policy 7: The City may use various means to finance, in whole or in part, improvements to public services in order to maintain public facility service levels and to carryout improvements identified in public facility plans, and adopted city goals and policies. This includes but is not limited to consideration of federal or state grants; water, sewer, storm drainage and other types of service charges; urban renewal funds, revenue or general obligation bonds, local improvement districts, and reimbursement districts.

WATER

Goal: To provide the City of Newport with a high quality water system that will supply residents and businesses with adequate quantities for consumption and fire protection.

Policy 1: The city will comply with state and federal laws concerning water quality and will take appropriate steps consistent with those laws to protect and maintain drinking water source areas.

Implementation Measure 1: The City shall work to establish a source water protection buffer in the Big Creek Watershed. The City declares the Big Creek Watershed a public facility consistent with the definition of Public Facility Systems in OAR 660-011-0005(7)(a)(A). The City will work to establish a source water protection buffer that is consistent with the findings of the Oregon Department of Environmental Quality / Oregon Health Department source water assessment report (PWS #4100566).

Policy 2: The water system will be designed and developed to satisfy the water demand of the various users under normal and predictable daily and seasonal patterns of use, and at the same time provide sufficient supplies for most emergency situations.

Policy 3: The city may extend water service to any property within the city's urban growth boundary, and may extend water service beyond the urban growth boundary if the extension of service is not inconsistent with an urban service agreement or other intergovernmental agreement. The city may require a consent to annexation as a condition of providing water service outside the city limits.

Policy 4: The city will acquire lands within the municipal watershed when available or necessary to protect water quality or improve its water system.

Policy 5: The city will reconstruct its municipal raw water storage and distribution facilities to address identified structural deficiencies to Big Creek Dam #1 and Big Creek Dam #2.

Implementation Measure 1: The city shall conduct necessary and appropriate engineering studies to determine the safest and most cost-effective approach to ensure the integrity of the municipal water supply. The studies shall identify the cost and timing of needed capital projects to address identified structural deficiencies and comply with Policy 2 of this section.

Implementation Measure 2: The city shall explore financing mechanisms, and prepare a financing plan to fund construction needed to resolve the structural deficiencies by 2030.

Implementation Measure 3: The city shall use data and findings from Implementation Measures 1 and 2 of this section to update the Water Supply section of the Public Facilities element of the Newport Comprehensive Plan to reflect new information as a result of the engineering and finance studies.

WASTEWATER

Goal: To provide a wastewater collection and treatment system with sufficient capacity to meet the present and future needs of the Newport urbanizable area in compliance with State and Federal regulations.

Policy 1: On-site sewer systems shall not be allowed unless the city's sanitary sewer system is greater than 250 feet away. In any case, a subsurface permit from the Lincoln County Sanitarian must be obtained prior to any development that will rely on an on-site sewer system.

Policy 2: City wastewater services may be extended to any property within the urban growth boundary. Except for the very limited circumstances allowed by state law and regulations, the city will not generally provide wastewater services outside the urban growth boundary. The city may require a consent to annexation as a condition of providing wastewater service outside the city limits. Nothing in this policy obligates the City to provide wastewater services outside of the city limits. For property outside the city limits but within the urban growth boundary, wastewater services may be provided at the City's discretion only for:

- a) residentially zoned lands as allowed by county zoning without full services, and
- b) commercial and industrial zoned lands to existing lawful uses as of the date (9/4/07) of this amendment.

Policy 3: The city will design and develop the wastewater collection and treatment system in a way that addresses the demands of the various users under normal and predictable daily and seasonal patterns of use.

TRANSPORTATION

Transportation Goals and Policies repealed by Ordinance No. 1802 (January 4, 1999).

STORM WATER DRAINAGE

Goal: To provide a storm water drainage system with sufficient capacity to meet the present and future needs of the Newport urbanizable area.

Policy 1: The city will comply with state and federal laws concerning water quality.

Policy 2: The city will use existing, natural drainage systems to the greatest extent possible.

AIRPORT

Goal: To provide for the aviation needs of the City of Newport and Lincoln County.

Policy 1: The city will ensure through zoning and subdivision ordinance provisions that the airport will be able to operate safely and efficiently.

Policy 2: The city will cooperate with state and federal agencies in the development of the airport.

PORT OF NEWPORT*

Goal: To collaborate with the Port of Newport on the implementation of its Capital Improvement Plan.

Policy 1: The city will coordinate with the Port of Newport when planning to upgrade or construct new public facilities within the Port District and will seek to partner on capital projects to achieve mutually beneficial outcomes.

Policy 2: The city will assist the Port of Newport in its efforts to secure outside funding for capital projects.

**Subsection added by Ordinance No. 2056 (September 5, 2013).*

CHAPTER 12.05 LOCAL IMPROVEMENT DISTRICTS
(2/3/16 revised draft)

12.05.005	Definitions
12.05.010	Initiations of Local Improvement Districts
12.05.015	Preliminary Engineer's Report
12.05.020	Council's Action on Engineer's Report
12.05.025	Notice of Hearing on District Formation
12.05.030	Hearing on District Formation
12.05.035	Final Plan and Specifications
12.05.040	Construction
12.05.045	Costs Included in Assessment
12.05.050	Method of Assessment
12.05.055	Alternative Methods of Financing
12.05.060	Final Assessment
12.05.065	Notice of Assessment
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12.05.075	Apportionment of Liens upon Partition
12.05.080	Lien and Foreclosure
12.05.085	Errors in Assessment and Calculations
12.05.090	Abandonment of Proceedings
12.05.095	Curative Provisions
12.05.100	Reassessment
12.05.105	Remedies
12.05.110	Interpretation and Coordination with State Law
12.05.115	Confidentiality
12.05.120	Appeals

12.05.005 Definitions:

The following definitions apply unless inconsistent with the context:

"Benefitted Property" means a property that is expected to be enhanced in value after an LID improvement is constructed, including: properties that are adjacent to an LID improvement; and properties that are proximate to an LID improvement. Benefiting properties will experience enhanced property value from improved accessibility, and improved urban services that result from an LID project.

"Chronic Disrepair" means a failing condition of public infrastructure that is deemed by the city to be beyond its useful life or failing in a manner that has necessitated unplanned public investment exceeding two times per year.

"Emergency condition" means public infrastructure that is

failing and poses imminent risk to the health and safety of residents, visitors, and/or businesses, including infrastructure conditions deemed by the city to be in a state of chronic failure.

“Local Improvement” has the meaning given under ORS 310.140 (9) (a) means a capital construction project or part thereof, undertaken by a local government, pursuant to ORS 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or part of the improvement:

- 1) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
- 2) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and

“Local Improvement District (LID)” means the area determined by the council to be specially benefited by a local improvement, within which properties are assessed to pay for the cost of the local improvement.

“Lot” means a lot, block or parcel of land.

“Non-Remonstrance Agreement” means a written agreement with the city, executed by a property owner or the owner’s predecessor in title, waiving the right of an owner to file a remonstrance against formation of an LID to fund identified public infrastructure improvements.

“Owner” means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment role in the office of the County Assessor.

“Remonstrance” means a written objection to the formation of an LID filed by an owner of property within a proposed LID.

12.05.010 Initiation of Local Improvement Districts

A. The council by motion or on petition of the owners of 75 percent of the property benefited by the proposed public improvement may direct that a preliminary engineering report be prepared to assist the council in determining whether a local improvement district should be formed to pay all or part

of proposed street, sewer, sidewalk, drainage and/or other public improvements.

B. When initiating an LID without petition by property owners, the city council shall consider the following factors:

1. Nature of the area benefited, including its existing condition and the extent to which the affected properties will benefit from the proposed public improvements.
2. The percentage of properties within the benefit area that have prerecorded non-remonstrance agreements or have owners that favor formation of an LID.
3. Whether or not the public improvements address existing or potential health and safety risk to city residents, businesses, employees or visitors; and/or addresses infrastructure in a state of chronic failure.
4. Ability to leverage alternative methods of funding from existing sources. For LIDs in developed residential areas, the aggregate assessment amount within a prospective LID should be no more than 10% of the assessed value of properties within the boundaries of the proposed district. The aggregate assessed value may be higher for other types of LIDs, such as developer initiated districts; however, in no case should it exceed 50% of the assessed value of the affected property.
5. Project cost contingencies and related construction risk factors, such as the need to acquire new public right-of-way, topographic challenges, or environmental issues.
6. The priority of the project per adopted public facility plans or capital improvement programs.

C. In the consideration of any of the above mentioned factors, a council initiated LID should have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans, regardless of the property owners repayment.

D. When a potential LID project is deemed by the city engineer or community development director to meet one or more of these factors, a council initiated district may be advanced by the council through a resolution requesting that a preliminary engineering report on LID formation be prepared.

12.05.015 Preliminary Engineer's Report

A. The preliminary engineer's report shall contain:

1. A full description of the project and its boundaries.
2. A description of each parcel of land specially benefited, including the name of the record owner of the parcel.
3. An estimate of the probable cost of the project, including property acquisition, design, construction, engineering, legal, administrative, interest or other costs.
4. A recommendation as to what portion of the total costs of the project should be paid by specifically benefited property.
5. A recommendation of a method of assessment, together with an estimate of the cost per unit to specially benefited property.
6. A recommendation whether to proceed with formation of the local improvement district.

12.05.020 Council's Action on Engineer's Report

A. After the engineer's report has been filed with the city recorder, the council may thereafter by motion approve the report, request that staff reassess elements of the report, require the engineer to supply additional or different information for such improvements, or it may abandon the improvement.

12.05.025 Notice of Hearing on District Formation

- A. Unless all owners of specially benefited property have petitioned for formation of the local improvement district and waived the right of remonstrance, the city shall provide notice to property owners of a council hearing on the proposed district by submitting a notice in a newspaper of general circulation within the town and by mailing notice to the owner's address listed in the county tax records. The city may provide additional notice.
- B. Within ten (10) business days of the filing of the report required by NMC 12.05.15 the recorder shall cause a

notice to be published twice in a newspaper of general circulation within the city setting out the following:

1. That a written project report for a proposed LID is on file and is available for examination at City Hall
 2. The date said report was filed
 3. The estimated probable cost of the proposed local improvement or the actual cost of the improvement if it has been completed;
 4. A description of the proposed improvement district and that a map of the proposed district is available for examination at City Hall;
 5. The time and place of the hearing required by NMC 12.05.30
 6. A statement that written and oral testimony submitted by any person will be considered at such hearing.
 7. That property owners wishing to remonstrate against the formation of the proposed district must submit their remonstrance in writing and file the remonstrance with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.
- C. Not less than ten (10) days prior to the hearing required by NMC12.05.030, mail to each property owner designated in the written engineering report a notice stating:
1. The information set forth in Subsection B of this section;
 2. The proposed method of assessment;
 3. The estimated amount of the assessment for each lot or portion thereof owned by the owner and whether the assessments are being levied prior to construction based upon estimates of project cost or after construction based upon known costs; and
 4. A statement that all remonstrances must be in writing and filed with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.

- D. Post a copy of the preliminary map of the proposed improvement district at City Hall.

12.05.030 Hearing on District Formation

- A. After the engineer's report, as submitted or modified, has been approved or accepted by city council resolution, the council shall hold a public hearing on the proposed improvement and formation of the district and consider oral and written testimony, as well as remonstrances. Such hearing shall be held after the receipt of the engineering report described in NMC 12.05.015 but not less than fifteen (15) days after the date of the second publication of notice.
- B. If property owners owning one half or more of the property area within the district to be specially assessed remonstrate against the improvement, the council shall suspend formation of the district for a period of not less than six (6) months. This provision shall not apply if the council unanimously declares the LID improvement to be needed because of an emergency or to remedy infrastructure in chronic disrepair. If a property has multiple owners, a remonstrance by an owner shall be considered a fraction of a remonstrance to the extent of the interest in the property of the person filing the remonstrance.
- C. All remonstrances must be in writing and filed with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.
- D. If insufficient remonstrances are filed to prevent the formation of the local improvement district, the council shall have discretion whether or not to form the district and proceed with the public improvement.
- E. Based on testimony at the hearing, the council may modify the scope of the improvements and/or the district boundary. The council may use any reasonable method of determining the extent of the local improvement district based on the benefits of the proposed local improvement(s). If any modifications approved by council include additional property or result in a likely increase in assessments on any property, the city shall hold another hearing and provide notice of the additional hearing in the same manner as it provided notice of the initial hearing.

- F. A decision to accept the engineer's report, form the local improvement district and proceed with making the local improvements shall be by resolution. This resolution shall at a minimum address the following:
1. Create the local improvement district and establish its boundaries;
 2. Determine generally the time for commencing and the manner of construction;
 3. Establish an account for the receipt and disbursal of monies relating to the project; and
 4. Establish the method for allocating the costs associated with the project.

12.05.035 Final Plan and Specifications

- A. After a council decision to form the district and proceed with the local improvement(s), the city shall obtain necessary rights-of-way and easements and for development of a final plan and specifications prior to publishing contract solicitation documents.
- B. After developing the final plan and specifications, the city engineer shall prepare a new estimate of costs. If the new estimate exceeds the original cost estimate by 10% or more at the time of its hearing or if the city engineer deems there to be significant changes in the project as a result of the additional unanticipated work, a supplemental engineer's report shall be prepared and submitted to the council which shall hold a hearing on the revised engineer's report. The hearing shall be noticed in the same manner as the original hearing, and property owners shall have the right to submit a remonstrance based on the revised engineer's report. The council shall follow the same procedure and standards applicable to the original hearing.

12.05.040 Construction

- A. Construction work on the local improvement(s) may be by the city, by another government agency, by contract with a private contractor, or by any combination of those entities. Any contracting shall be in accordance with the city's public contracting rules.

- B. Construction may proceed after the development of the final plan and specification if the scope and budget vary less than 10% from the improvements authorized by the council after the initial hearing. If the scope and budget vary more than 10%, an additional hearing must be held. If an additional hearing is held, construction may proceed after a council decision accepting the revised engineer's report and directing that the local improvement(s) be constructed.

12.05.045 Costs Included in Assessment

The costs and expenses that may be assessed against specially benefited property include but are not limited to:

- A. The costs of property, right-of-way or easement acquisition, including the cost of any condemnation proceedings.
- B. Engineering and survey costs.
- C. Costs of construction and installation of improvements, including but not limited to: streets, curbs, sidewalks gutters, catch basins, storm water improvements, driveways, accessways, lighting, traffic control devices, painting, and striping, surface water management facilities, water and sewer lines, lift stations, and fire hydrants.
- D. Costs of preliminary studies.
- E. Advertising, legal, administrative, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.
- F. Financing costs, including interest charges.
- G. Attorney fees.
- H. Any other necessary expenses.

12.05.050 Method of Assessment

- A. The Council shall:
 - 1. Use a fair and reasonable method for determining the extent of the improvement district boundaries that is

consistent with the benefits derived.

2. Consider fair and reasonable methods for apportioning the actual or estimated costs of the improvement among benefited properties including but not limited to those methods identified in NMC 12.05.050(D).

B. The Council may:

1. Authorize payment by the City of all or any part of the cost of such improvements; provided that the method selected creates a reasonable relation between the benefits derived by the property specially benefited and the benefits derived by the City as a whole.
2. At any time prior to the effective date of the resolution levying the assessments for any improvement district, modify the method adopted in the resolution forming the improvement district if the Council determines that a different method is a more just and reasonable method of apportioning the cost of the project to the properties benefited.
3. Use any other means to finance improvements, including federal or state grants-in-aid, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance to pay either all or any part of the cost of the improvements.

C. In establishing a fair and reasonable method for apportioning the actual or estimated cost of local improvements among benefited properties, the Council shall rely upon the following guidelines:

1. Individual property owners shall pay for public improvements specially benefiting their property. The determination of benefit shall be made irrespective of whether the property is vacant or the owner elects to connect to the local improvements. Special costs or features of the improvement that benefit a particular parcel of property in a manner peculiar to that parcel shall, together with a share of the overhead for the improvement, be assessed separately against the parcel.
2. Costs of the improvement to be borne by the City shall

be excluded from the assessment before apportionment. The City will pay the cost of:

- i. Extra capacity improvements when the size of the public improvements required exceed the minimum standards established in the Specifications and Standards for Construction of Public Improvements adopted in accordance with local transportation plans or public facility plans, and the project has been included in the City budget document for the fiscal year during which construction of the improvement is scheduled; or
- ii. Special and unusual costs when the Council determines that circumstances exist which warrant City payment of all or a portion of the cost of the public improvements.

D. In establishing a fair and reasonable method for apportioning actual or estimated costs of local improvements among benefited properties, the Council may, but in no way is required to, rely upon the following guidelines (as summarized in Exhibit 12.05.05-1) and described below:

1. Improvement Costs of Streets.

- i. Street improvement costs may include all improvements required or as established by the improvement district within the public right of way. Such improvements shall meet the minimum standards adopted under the Newport Transportation System Plan and may include any of the elements identified in Section 12.05.045.
- ii. Costs shall be applied on a per linear foot basis, or other methods identified in the engineer's report. Where a property owner requests or requires supplemental approach construction (i.e., widened driveway aprons that access individual properties), the costs associated with that additional construction shall be assessed to the individual property owner benefitting from this supplemental construction.




2. Improvement Costs of Sidewalks. Parcels abutting a sidewalk shall be liable for a proportionate share of

the cost of the sidewalks, based on the front footage of the parcel abutting the sidewalk. Where, however, the Council finds that construction of a sidewalk on both sides of the street is unnecessary or not feasible; the cost of the sidewalk on one side of the street may be assessed to both the parcels abutting the sidewalk and the parcels on the opposite side of the street from the sidewalk.

3. Improvement Costs of Surface Water Management.
The cost to be assessed shall be apportioned to each parcel within the improvement district on the basis of its land area that contributes to or otherwise directly benefits from the City's drainage system.

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Exhibit 12.05.05-1

Assessment Method	LID Improvement Type			
	Street/ Sidewalk	Sewer	Water	Stormwater
Existing Assessed Value	✓	✓	✓	✓
Expected Change in Assessed Value	✓	✓	✓	✓
Gross Land Area	✓	✓	✓	✓
Linear Frontage Along Improvement	✓	✓	✓	✓
Existing Trip Generation	✓	-	-	-
Expected Change in Trip Generation	✓	-	-	-
Existing Sewer Connections	-	✓	-	-
Expected Change in Sewer Connection	-	✓	-	-
Existing Water Meter Connections	-	-	✓	-
Expected Change in Water Meter Connections	-	-	✓	-
Existing Impervious Surface Area	-	-	-	✓
Expected Change in Impervious Surface Area	-	-	-	✓
Legend  Primary Assessment Method  Secondary Assessment Method  Tertiary Assessment Method				

4. Improvement Costs of Water and Sewer Lines.

- i. The properties specially benefited by a sewer main or water pipe shall bear the cost of the system up to and including eight inches of pipe diameter. These costs shall be apportioned to each parcel on the basis of a cost per square foot of service area, determined by dividing the total system

cost by the total service area.

- ii. In addition to main or pipe costs, each property benefited by a sewer main or water pipe shall be considered to have at least one service line connection point. If more than one service line connection point is provided for a benefited parcel, it shall be assessed for the actual number of service line connection points. All costs related to the service lines, including overhead costs, shall be divided by the total number of service line connection points, to determine the cost per service line connection point.
5. Corner Lots. For street, sewer, water and/or stormwater project LIDs that assess costs to properties based upon linear frontage, corner lots may be exempted from an assessment for the first 100 feet of frontage on the side abutting a local improvement, or for the full length of the side abutting the improvement, whichever is shorter, if one or more of the following conditions exist and the City Council grants an exemption:
 - i. The local improvement is required to serve a new subdivision or new development, the corner lot is located outside the subdivision or development, and the corner lot will receive no benefit from the local improvement for which the assessment is levied; or
 - ii. The corner lot has two sides abutting the local improvement for which the assessment is levied and is being assessed for the full frontage of one side abutting the improvement; or
 - iii. The Council determines the Corner Lot receives no benefit from the local improvement for which the assessment is levied and the property has been previously assessed for the same type of local improvement on the side not abutting the local improvement for which the assessment is levied.

The City Council need not grant a Corner Lot exemption if the Council determines the property will receive a benefit from the local improvement for which the assessment is being levied.
6. Minimum Frontage. All lots may be assessed for an equivalent front footage of no less than 60 feet.
7. Benefited Property. A benefited property may be defined as one which is adjacent to any street, easement or right of way on which a local improvement is installed or which reasonably is capable of connecting to, or directly benefiting from, the

improvement.

8. **Assessment Alternative.** Assessment alternatives that vary from those listed in this section may be identified within the engineer's report. A weighting method may be considered among multiple alternatives to determine a hybrid alternative assessment.
9. **Equal Assessments.** If property owners of all or part of the benefited properties within the improvement district are in unanimous agreement, and so request, then their share of the improvement costs may be apportioned in equal amounts.

12.05.055 Alternative Methods of Financing

A. The Council may allocate a portion of the cost of such improvement from the funds of the city. The council may base this on topographic concerns, the physical layout of the improvement, unusual or excessive public use of the improvement, or other characteristics. The amount assessed against all property specially benefited will be proportionately reduced.

B. The council may use other means to finance, in whole or in part, the improvements, including but not limited to: federal or state grants-in-aid, sewer or other types of utility charges, urban renewal funds, revenue or general obligation bonds.

12.05.060 Final Assessment

- A. After final acceptance of the public improvements by the city, the city engineer shall prepare a final report that describes the completed improvement, lists the total costs with a breakdown of the components of the total cost, and proposes a method of assessment. The city engineer shall prepare the proposed assessments for each lot within the improvement district, file the assessments with the finance director, and submit a proposed assessment resolution to the city council. The city engineer shall provide an explanation of any difference in the proposed cost allocation or method of assessment previously proposed.
- B. The city council shall hold a hearing on the final engineer's report and at that hearing shall establish by resolution the method of assessment and amount to be assessed against each specially benefited property.

- C. The council in adopting a method of assessment of the costs of the improvement(s) may use any method of apportioning the sum to be assessed that the council determines to be just and reasonable among the properties in the local improvement district.
- D. After the council adopts the assessment resolution, the city will schedule a council hearing and mail notice of the proposed assessments to each owner of assessed property within the district at least 10 days before the hearing. The notice shall contain:
 - 1. The name of the owner and a description of the property to be assessed.
 - 2. The amount of the assessment.
 - 3. The proposed allocation and method of assessment.
 - 4. The date, time and place of the council hearing on objections to the assessment, and the deadline to submit written objections before the hearing.
 - 5. A statement that the assessment as stated in the notice or as modified by the council after the hearing will be levied by the council, charged against the property, and be due and payable.
- E. Any mistake, error, omission or failure relating to the notice shall not invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been provided to the property owner, or if owner cannot be located, notice is published once a week for two consecutive weeks in a newspaper of general circulation in the city.
- F. The council shall hold the public hearing and consider oral and written objections and comments. After the hearing, the council shall determine the amount of assessment to be charged against each property within the district according to the special benefits to each property from the improvement(s). The final decision spreading the assessment shall be by resolution.
- G. If the initial assessment has been made on the basis of estimated cost, and, upon completion of the work, the cost is found to be greater than the estimated cost, the

council may make a deficit assessment for the additional cost, provided, however, the council may not make a deficit assessment for more than ten (10) percent of the initial assessment. Proposed assessments upon the respective lots within the special improvement district for a proportionate share of the deficit shall be made, notices shall be sent, opportunity for objections shall be given, any objections shall be considered, and a determination of the assessment against each particular lot, block, or parcel of land shall be made in the same manner as in the case of the initial assessment, and the deficit assessment shall be spread by resolution.

- H. If assessments have been made on the basis of estimated cost and upon completion of the improvement project the cost is found to be less than the estimated cost, the council shall ascertain and declare the same by resolution, and when so declared the excess amounts shall be entered on the city lien record as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or that person's legal representative or successor, shall be entitled to repayment of the excess amount. If the property owner has filed an application to pay the assessment by installment, the owner shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of the refund shall be deducted from such assessment, and the remainder shall remain a lien on the property until legally satisfied.

12.05.065 Notice of Assessment

Within 10 days after the effective date of the resolution levying the assessments, the finance director shall send by first-class mail to the owner of the assessed property a notice containing the following information:

- A. The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed.
- B. A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this chapter.

- C. A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within 30 days of the date of the notice and, if unpaid on that date, will accrue interest and subject the property to foreclosure.

Supplementary notice of assessment in form and content to be determined by the finance director may also be published or posted by the finance director.

12.05.070 Financing of LID Program

- A. The City will account for the payment of LID formation costs, construction costs and the retirement of debt incurred by the City in connection with local improvement projects on which the payment of assessments has been deferred under this Ordinance.
- B. The initial funds for the LID program will be taken from fund transfers and/or debt approved by the City Council and shall be allocated to LID projects in a manner that takes into account expenditure restrictions. LID program financing by the City will be secured by property liens using debt instruments such as revenue bonds, loans, inter-fund loans, etc. with a debt reserve that equates to 12-months of combined interest/principal obligations on outstanding LID fund balances.
- C. Deferments shall be granted on a pro rata or otherwise equitable basis, depending upon individual assessment amounts for applications received within the time period set under Section 12(3) for submittal, to the extent that Program funds are available.

12.05.075 Payment

- A. Unless an application is made for payment in installments as provided by this section, assessments shall be due and payable in full within 30 days after the date the notice of assessment is mailed, and if not so paid, shall bear interest at the rate of 9 percent per year. The city may proceed to foreclose or enforce collection of the assessment lien if the amount is not paid in full within 90 days of the date the notice of assessment is mailed.
- B. Any time within 30 days after the notice of assessment is

mailed or within 30 days of resolution of any writ of review proceeding challenging the assessment, the owner of the property may apply to pay the any assessment in excess of \$500 in ten equal annual installments, with the first payment to be paid within 30 days of the determination by the finance director of the amount of the annual payment. The application shall state:

1. That the applicant waives all irregularities or defects, jurisdictional or otherwise, in any way relating to the assessment.
 2. State that the applicant understands the terms and conditions of the city's payment policies including the penalties for nonpayment.
- C. On receipt of an application for payment in installments, the finance director shall determine whether the city will finance the payments internally or issue bonds or obtain a loan for the amount financed. The interest rate will be set at the interest rate charged to the city, plus 2%. If the city finances the payments internally, the interest rate shall be at the interest rate payable to the city if it had invested the money in a local government pool account, plus 3%. The finance director shall then notify the property owner of the payment amounts and due dates.
- D. If any installment payment is not paid within one year of the due date, the council shall adopt a resolution declaring the entire amount of principal and interest due and payable at once.
- E. The entire amount of principal and accrued interest shall be payable on any sale of the specially assessed property or change in its boundaries.
- F. There shall be no penalty for early payment or early retirement of LID principal amounts.

12.05.080 Lien and Foreclosure

- A. The finance director shall enter in the city lien docket:
1. A statement of the amounts assessed upon each particular lot, parcel of land or portion thereof;

2. A description of the improvement;
 3. The names of the owners; and
 4. The date of the assessment resolution.
- B. On entry in the lien docket, the amount entered shall become a lien and charge upon the properties that have been assessed for such improvement.
- C. All assessments liens of the city shall be superior and prior to all other liens or encumbrances on property in accordance with ORS 94.709.
- D. The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

12.05.085 Errors in Assessment Calculations

Claimed errors in the calculation of assessments shall be called to the attention of the finance director who shall determine whether there has been an error. If the finance director determines that there has been an error, the matter shall be referred to the council for an amendment of the assessment resolution. On amendment of the resolution, the finance director shall make necessary corrections in the city lien docket and send a correct notice of assessment by certified mail.

12.05.090 Abandonment of Proceedings

The council may abandon and rescind proceedings for improvements at any time prior to the final completion of the improvements. No assessment shall be imposed if improvements are not completed.

12.05.095 Curative Provisions

No improvement assessment shall be rendered invalid by a failure of any incompleteness or other defect in any engineer's report, resolution, notice, or by any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps required by this chapter, unless the assessment is unfair or unjust. The council shall have the authority to remedy or correct any matter by suitable proceedings and action.

12.05.100 Reassessment

A. Whenever all or part of an assessment or reassessment for any local improvement is declared void, set aside for any reason, not enforced by a court or the council determines the assessments should be adjusted, the council may make a new assessment but shall not be required to repeat any portion of the procedure properly completed.

B. The reassessment procedures for making the new assessment will follow the same procedures used for the initial assessment under NMC12.05.050 and 12.05.085. The new assessment is not limited to the amounts included in the original assessments or to the property included within the original assessment if the council finds that additional property is specially benefited and subject to assessment.

C. Credit must be allowed on the new assessment for any payments made on the original assessment as of the date of payment. Interest on the original assessments must be included in the new assessment to the extent the new assessment includes amounts also included in the original assessment. The council will include interest as part of the overall assessable project cost. The amount will be based on the construction financing interest rate in effect and applicable to the district at the time of the original proceedings on moneys paid on the construction or financing of the project.

12.05.105 Remedies

Actions of the council under this chapter are reviewable only by writ of review.

12.05.110 Interpretation and Coordination with State Law

The provisions of this chapter shall be interpreted consistent with state law relating to local improvement districts and Bancroft bonding. When state law authorizes local governments to adopt standards and procedures different from those specified in the statutes, the city may comply with either this chapter or state statutes. To the extent that any standard or procedure is not governed by this chapter, the city shall comply with state statutes.

12.05.115 Confidentiality

To the maximum extent possible under the law, the applications, records and other information relating to deferments shall be kept confidential by the City.

12.05.120 Appeals

Owners of property against which an assessment or reassessment for local improvements has been imposed may seek a review of any council decision under the provisions of ORS 34.010 to 34.102.

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City of Newport



Local Improvement
District Implementation
Strategy

February 10, 2016

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SECTION I: INTRODUCTION

A. PURPOSE

This work effort was initiated by the City of Newport with funding contributed by the ODOT/TGM grant program to provide a strategy for optimizing the use of Local Improvement Districts (LIDs) in Newport and other medium-size cities throughout Oregon.

The City of Newport (City) has excelled at creatively funding necessary public capacity improvements to support desired growth and strategic development. Like many jurisdictions, Newport has limited resources to undertake every project identified in its public facility plans for transportation, water, sewer, stormwater and parks. As such, Newport must rely upon multiple funding resources to provide adequate funding for local improvements. The combination of urban renewal area funds, enterprise funds, discretionary local funds, system development charge revenues, and LIDs can provide a more balanced local funding mix required to address facility improvement needs of Oregon's cities.

B. WHAT IS AN LID?

An LID is a funding mechanism in which the property owners in a designated “benefit district” are assessed a portion of the cost of a new capital improvement that benefits that area. An LID is initiated either by a petition submitted by the property owners or by a vote of the city council. If an adequate number (typically at least half as measured by gross land area) of the property owners within the district agree to the assessment, the LID may move forward for consideration and adoption. After engineering, permitting and right of way acquisition associated with the project are completed, the municipality usually incurs debt to finance the LID project. This debt is paid as property owners within the district make payments to the city on their special assessment.

Any jurisdiction or property owner that stands to benefit from local public facility investments may want to consider the formation of an LID as a means to pay for all or part of that improvement. Once an LID is formed it can benefit both the public and private sectors.

Private (property owner) benefits from LID formations most often include:

- ◆ Enhanced access to new roads, sidewalks, water lines, sewer lines, storm drainage facilities that help increase property values or support development
- ◆ Ability to obtain public funding or financing to pay for construction of local facilities, rather than requiring private equity or private debt to pay for improvements as a condition of development or redevelopment
- ◆ Ability to share the cost of local facility construction among multiple property owners in a manner that is roughly proportional to expected benefits
- ◆ Flexibility of structuring private payment of LID assessments over time

Public-sector benefits from LIDs include:

- ◆ Improved public facility or infrastructure conditions in targeted redevelopment areas
- ◆ Increases in assessed property valuations as new private investment occurs
- ◆ Assurance that properties will help mitigate the risk created from publically financed infrastructure, using secured liens against properties until assessments are paid in full
- ◆ In certain cases, LIDs may serve as a “final piece of the funding puzzle” and used to match or leverage other funding mechanisms to complete a strategic infrastructure project
- ◆ LIDs tend to mitigate political risks when the city council votes to create an LID in an area that has significant levels of support from a majority of property owners

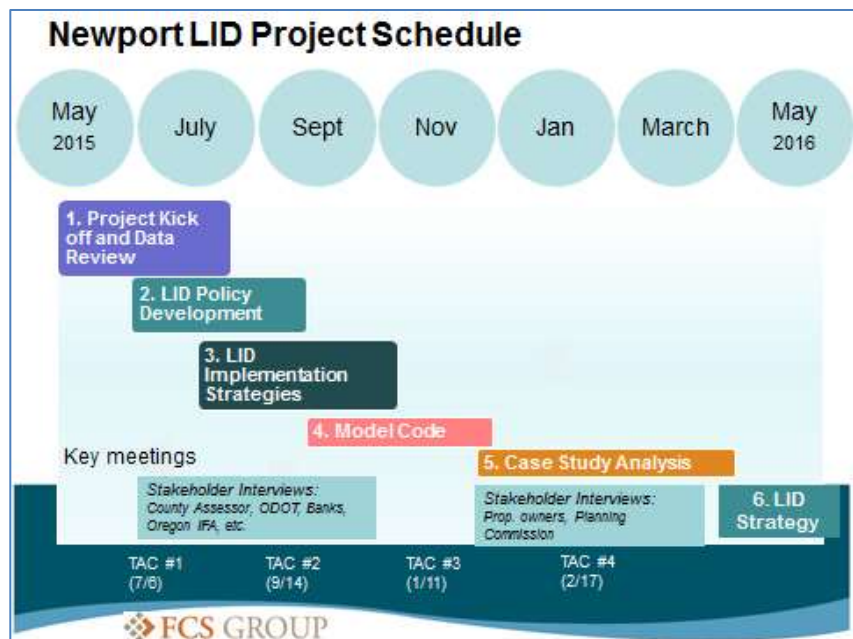
LIDs that are “right sized” with costs and benefits that are apportioned in an equitable manner represent a “win-win” for both the public and private sectors.

C. DOCUMENT OVERVIEW

Since small to medium-size jurisdictions have limited staff time and financial resources to implement LIDs, it is important to understand the costs, benefits and procedures for creating LIDs well before they are adopted. This document provides a summary of the Newport LID Implementation Strategy findings. The key chapters reflect the outcome of major work tasks including:

- ◆ **Section 2 Interviews and Stakeholder Input**, describes the issues and “best practices” to consider when creating LIDs including legal, financial, community outreach and technical matters.
- ◆ **Section 3 Case Studies**: describes a range of successful LIDs in Oregon, including the nature of their public investments, resulting private investment, and key metrics.
- ◆ **Section 4 Policy Recommendations**: summarizes important policy and code considerations to help Newport and other Oregon jurisdictions create a process for consistently implementing LIDs in the future.
- ◆ **Section 5 Model Code**: Includes specific policy and code recommendations for the city of Newport

The facing graphic illustrates the planning process used to generate these findings and recommendations.



II. INTERVIEWS AND STAKEHOLDER INPUT

When evaluating LIDs, one must recognize the many issues to consider, ranging from how to monitor community/property owner support; measure or mitigate public risk; determine and allocate costs/benefits; and record non-remonstrance agreements, liens and collect assessments. To help define key issues surrounding LID's, FCS GROUP conducted interviews with LID legal and policy experts, and stakeholder meetings with Newport planning commissioners, and obtained input from the study's Technical Advisory Committee (TAC) throughout this study process.

Appendix A provides a summary of key issues and considerations when forming LIDs. Some highlights include:

A. INTERVIEW INPUT REGARDING LID ISSUES

General Findings

- ♦ **LIDs are considered a reliable loan repayment source since they are secured by property liens.**
- ♦ **LIDs cannot be billed as part of property tax statements sent by the county assessor.** For Newport, and most cities this means collecting LID assessments is done through utility billing systems, or a separate revenue billing/collection process altogether.

Considerations prior to LID formation

- ♦ **Codify how the local government will participate in LIDs.** It should be clear to staff, elected officials and citizens what to expect from the city in terms of its participation or role in forming an LID, and when it makes sense to consider a city-imitated or a property owner -imitated LID.
- ♦ **Establish dedicated LID reserve funds.** The city can mitigate financing risk in case of a economic downturn or payment default, by establishing a reserve or escrow fund equal to one year of debt service. This is particularly important with single-developer LIDs or LIDs in undeveloped areas (minimal existing property valuation).

Non-Remonstrance Agreements

- ♦ **Non-remonstrance agreements may expire.** The local ordinance governing LIDs and non-remonstrance agreements can vary. Some local ordinances include an expiration timeline which can render an important non-remonstrance agreement void after a number of years. Additionally, some individual non-remonstrance agreements are negotiated to include an expiration date. When considering an LID, staff should review the number and scope of pre-existing non-remonstrance agreements that are valid.
- ♦ **LIDs enacted using non-remonstrance agreements must provide a benefit to the property owners.** LID methodologies that fail to demonstrate benefit to assessed properties have been struck down when challenged in court. Such determinations have severe implications (and costs) for the municipalities administering the associated LID. Please refer to section of benefit assessment techniques below.

Benefit Assessment & Apportionment Techniques

- ◆ **Benefit assessment must be clear and objective.** This process must exhibit an equitable allocation of cost based upon proximity to the improvement and the value created for specific properties within the district. In relatively large LID areas, it may be more equitable to consider two or more benefit subareas, such as subarea 1 that includes properties fronting the improvement, and subarea 2 that includes all other properties within 250 feet of the improvement.
- ◆ **City-wide vs local benefits.** In the case that an LID improvement creates both local and city-wide benefit, the apportionment technique should measure both types of benefit (inside and outside the district) and allocate costs accordingly.
- ◆ **LID assessment-to-property value ratio.** To mitigate the risk associated with a new LID, it is helpful to adopt a policy objective that limits the cost of the total aggregate LID assessment within the district to no more than half the real market value of property within the district. In the case of a vacant land LID, the real market value of the land upon completion of an LID project (once new infrastructure is constructed) should be considered.

Public Outreach

- ◆ **Closely monitor public support.** The city should determine the level of support necessary to approve an LID and the level of opposition (remonstrance) necessary to dissolve an LID. Outreach should exceed the requirements contained in Oregon statutes. Such outreach might include sending flyers to property owners by registered mail to inform them about the project, canvassing residents door to door, internet videos about the LID, and holding public meetings.
- ◆ **Respond to inquiries in writing.** This should be done to ensure effective communication, and to provide an official record of information to interested property owners should a legal challenge to the formation of the LID occur.
- ◆ **Preliminary report vs. final assessment.** Consider conducting additional public meetings if project costs substantially increase (e.g. cost increase from prior estimates by more than 10%) between the preliminary report and final assessment.

Financing and Funding

- ◆ **Consider risk when determining the LID payment interest rate.** The interest rate used to calculate LID annual payments is variable and should be set at a level to recover the cost of financing, and all associated administrative costs. ORS 223.215c and ORS 82.010 provide specific guidance in implementing this aspect of an LID.
- ◆ **Create a financial checklist for LID formation.** The City should determine if properties in an LID have existing liens in order to determine potential default risk. In the case of a private-initiated single-developer LID, the city should research the developer's track record, letters of credit, creditors, and credit rating prior to approving an LID.
- ◆ **Require a letter of credit in single developer LIDs.** To provide additional assurance that the single developer will not default on LID payments, the City should require a letter of credit on behalf of the single developer.

Post LID Construction

- ◆ **Establish liens after construction is complete.** This avoids additional legal challenges and ensures that all costs are included in the lien placed on the property.
- ◆ **Ensure assessments are paid in full prior to sale of property.** The City can require property owners to pay any LID liens prior to sale or transfer of property ownership.

- ◆ **Effects of property subdivision.** If LID assessments are allowed to transfer among property owners as land is subdivided, additional administrative costs will likely accrue to the City. As such, additional LID fees may be established to recover these added costs.

B. TAC AND STAKEHOLDER INPUT ON LID POLICIES

The input received at TAC and stakeholder group meetings was very helpful in understanding how to create local policies necessary for implementing effective LIDs. Highlights from these meetings are included below.

Local policies are required to provide guidance to city staff, city council members and interested stakeholders on when to advance LID projects

- ◆ LID policies should be designed to advance LID by private-initiated petitions over LIDs initiated by the city council. LIDs with over 75% support (based on area of benefit owned by those subject to a signed petition or pre-existing non-remonstrance agreement) should be the top priority. LIDs with between 50% and 75% support would be second priority. LIDs with less than 50% support (by petition) would not be considered.
- ◆ The city should only expend funds to prepare an Engineer's Report, as resources permit in a manner consistent with the annual budgeting process.
- ◆ For LID projects initiated by city resolution (without petition), clear and objective criteria should be used to determine whether the City should proceed with the LID.
- ◆ As it relates to council-initiated LIDs, the term "emergency" should be defined and utilized as a criteria for prioritizing LIDs.

Cities should establish or set aside reserves that may be used to evaluate or advance city-initiated LIDs.

- ◆ There is a need for a policy that recommends the creation of a local LID fund with city provided "seed money" to cover such costs as the Engineer's Report and public outreach activities.

Full cost recovery of LID assessments

- ◆ A policy recommending that the "full cost" (i.e. engineering, admin, outreach, in addition to construction costs) of LIDs should be included with the final LID assessment.
- ◆ Policies that allow for partial improvements (rather than interim improvements) are appropriate as an exception to city standards in rare circumstances. It is recommended that city staff determine if an LID project can be allowed to be a "partial" or a "full improvement." Partial improvements may be permitted only as an exception to the City's adopted design standard if the City Engineer determines that a project's construction is inhibited by issues such as steep topography; environmental impacts; or other major construction challenges that prohibit construction of the adopted design standard.
- ◆ It was noted that preliminary cost estimates for prospective LIDs will be very rough initially, which could be detrimental if there are unknown risks regarding project construction. More accurate cost estimates can only be obtained after a survey of the project is conducted, and realistic unit costs are prepared. Hence, local policies should clearly indicate when changes in cost estimates require additional outreach to property owners to ensure their support for creating the LID.
- ◆ An LID petition filing fee should be adopted to defray administrative costs of private-initiated LIDs and their associated Engineer's Reports.

Benefit Apportionment Policies

- ◆ Specific LID cost apportionment methods (e.g., linear frontage, area, assessed value, etc.) should be recommended along with a weighting method to provide consistent use of apportionment practices. This approach should retain some flexibility in how LID apportionment should be formed for each project being considered. A recommended list of primary, secondary and tertiary LID apportionment techniques is provided in Exhibit 2.1.

Community Outreach Policies

- ◆ An LID creation checklist should be created as an educational resource to property owners, city staff and city council members to provide clear guidance on the steps required to advance private-initiated LIDs.
- ◆ Cities should attempt to go beyond the minimum state requirements for adopting LIDs. This may include outreach techniques such as sending “certified mail” to affected property owners, door-to-door canvassing, special web-based information, and public open house meetings.

In urbanizing areas, cities should review their inter-governmental agreements with counties to ensure that the cities have the authorization to assess properties in the county that have not yet been annexed into the city.

- ◆ The City will need to revisit and update the City/County intergovernmental agreement to allow LIDs to be assessed on properties outside city limits.

Exhibit 2.1 Recommended LID Cost Apportionment Methods by Public Facility Type

Assessment Method	Street/ Sidewalk	Sewer	Water	Stormwater
Existing Assessed Value	✓	✓	✓	✓
Expected Change in Assessed Value	✓	✓	✓	✓
Gross Land Area	✓	✓	✓	✓
Linear Frontage Along Improvement	✓	✓	✓	✓
Existing Trip Generation	✓	-	-	-
Expected Change in Trip Generation	✓	-	-	-
Existing Sewer Connections	-	✓	-	-
Expected Change in Sewer Connection	-	✓	-	-
Existing Water Meter Connections	-	-	✓	-
Expected Change in Water Meter Connections	-	-	✓	-
Existing EDUs on Property	✓	✓	✓	✓
Expected Change in EDUs on Property	✓	✓	✓	✓
Existing Impervious Surface Area	-	-	-	✓
Expected Change in Impervious Surface Area	-	-	-	✓
Legend  Primary Assessment Method  Secondary Assessment Method  Tertiary Assessment Method				

SECTION III: LID CASE STUDIES

In order to provide examples of how LIDs are being implemented throughout the state, FSC GROUP and the Oregon League of Cities identified communities which had used LIDs in the recent past.

Exhibit 2.1 is a list of such communities. FCS GROUP selected three communities which had enacted LIDs and examined their experience in implementing the practice. The results of these case studies are meant to illuminate the potential positive outcomes, provide examples of the types of projects which LIDs can help finance, and share the experience of cities.

A. SUMMARY OF FINDINGS

There are several best practices that can be used to avoid the most common risks of forming successful LIDs. The most elemental practices include:

- ◆ Formulate and adopt local LID policy ordinance before implementing a new LID.
- ◆ Consider the risks, benefits and costs from the public and private perspectives before implementing an LID.
- ◆ Establish protocols to follow that relate to the type, cost and characteristics of the LID.
- ◆ Establish parameters that guide non-LID public investment/funding commitments in proportion to the level of local (specific) and general public benefit expected by the new public facility improvements.
- ◆ Provide opportunities for input by affected property owners at key steps in the LID formation process. The steps include the following:
 1. Purpose/need determination
 2. LID formation and cost allocation alternatives analysis
 3. Draft LID assessment method (draft cost allocation)
 4. Final LID assessment method (final cost allocation)

Exhibit 3.1: Cities that have used LIDs in Oregon

Albany
Ashland
Burns
Canby
Central Point
Coos Bay
Cottage Grove
Eugene
Florence
Gervais
Independence
Jefferson
Lincoln City
Newberg
Newport
Oakridge
Ontario
Pendleton
Portland
Redmond
Roseburg
Silverton
Springfield
St. Helens
The Dalles
Tigard
Winston

Source: Oregon
League of Cities, and
FCS GROUP

CASE STUDY #1 LINCOLN CITY NE VOYAGE RD., LAKE & 15TH AVE. LID

In 2010, a Lincoln City resident began to solicit support from his neighbors to form an LID to provide sewer service in his neighborhood. He shared that sewer technology had advanced; allowing residents of the ability to pressurize their connection which would allow their systems to reach existing pump stations. This connection would allow residents of the neighborhood to get off of septic systems, freeing them from costly on-site repairs. During this process, Mr. Green discovered that his neighbors were also anxious to pave their streets; an element which was added to the LID along with storm water quality facilities to treat road runoff prior to the water entering the adjacent lake. In 2011, City Council approved the initiation of the LID. In 2014, land owners north of 15th St., realizing that part of the LID included sanitary sewer easements on their property, asked to be let out of the process (a request the City Council granted). In July 2015, the city solicited bids for the entirety of the project and construction is slated to occur during winter 2015/16.

Case Study Summary

Sewer Improvements

- ◆ Total Project Cost: **\$357,000**
- ◆ LID boundary included 43 affected properties
- ◆ Avg. Cost per property: **\$8,302**

Paving Improvements

- ◆ Total Project Cost: **\$531,000**
- ◆ LID boundary included 53 affected properties
- ◆ Avg. Cost per property: **\$10,018**

PROPERTY ASSESSMENT FORMULA

Engineers organized properties into zones of benefit based upon the improvements they needed: sewer only, sewer and pavement and pavement only. Those properties fronting the new pavement are assessed an equal amount, regardless of lot size. Those properties receiving sewer service will be assessed based upon the number of service laterals they receive. For those properties receiving both paving and sewer improvements, assessments would include both of the above-mentioned charges

Additionally, the city established a sewer reimbursement district over the area of benefit. This means that property owners that paid for the new sewer infrastructure (prior to the establishment of the LID) will be reimbursed or credited when new users pay the city to hook-up to the new sewer infrastructure.



CASE STUDY #2 DOWNTOWN HILLSBORO LID

At the request of the Hillsboro Downtown Business Association, with over 100 members, the city of Hillsboro initiated an LID in 1997 for a portion of downtown. Over 60 percent of the property owners signed non-remonstrance agreements, further indicating local property owner support. The LID area included 9 blocks with 89 affected properties.

The LID project included streetscape enhancements with new sidewalks, street lights, landscaping, curb extensions, and pedestrian crosswalks. The project was completed on time and on budget. The assessed valuation of the LID area has increased four-fold in constant 2015 dollars.



Figure 1 – View on Main St near 2nd and Main

Case Study Summary

- ◆ Total Project Cost: **\$3,150,000**
 - LID assessment: **\$1.6 million** (City Council approved a not-to-exceed cap on the assessment)
 - City of Hillsboro and Unified Sewer Agency (now Clean Water Services) provided a match of **\$1.4 million** (for underground utilities)
 - Washington County provided a match of: **\$150,000** (for half street improvements)
- ◆ Cost to properties: **\$3,800 to \$80,000 per assessment**

	1997	2015
Building Floor Area	397,000	445,000
Total Assessed Value (2015 \$)	\$21.5 million	\$89.6 million

PROPERTY ASSESSMENT FORMULA

The LID was assessed on the following formula:

- A quarter ($\frac{1}{4}$) of improvement total cost is based upon total foot frontage abutting the improvement,
- A quarter ($\frac{1}{4}$) of improvement cost is based upon total land area,
- Half ($\frac{1}{2}$) of improvement costs is based upon dwelling unit equivalents (If occupied, 100 sf of developed building = 1 DUE; if vacant, 200 sf of land = 1 DUE). (DUE = dwelling unit equivalent)

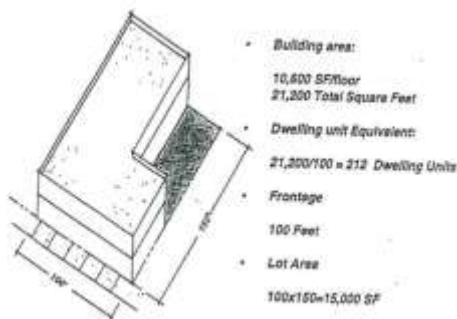


Figure 2 – LID assessment formula graphic



Figure 3 – View on Main St toward City hall on 3rd and Main

CASE STUDY #3 HAPPY VALLEY TOWN CENTER LID

In 2003, Happy Valley emerged as the second fastest growing city in Oregon. A new +/- 218 acre annexation area was slated to absorb significant residential growth in the City. The owners of the land, along with officials from Happy Valley and Clackamas County, identified the need for two new major street collectors (147th Ave. and Mistry Drive) to serve the planned housing a major commercial Town Center. Most of the project's cost was paid with transportation system development charges; however, the anticipated \$8 million project still had a \$1.44 million funding gap. After analyzing the project, consultants, property owners and city officials agreed that a local improvement district (LID) would be the best solution to fund the gap.

Project improvements included two new collectors with two travel lanes, turn lanes, landscaped medians, pedestrian crossings, sidewalks, bike lanes, street lights and storm drainage systems.

PROPERTY ASSESSMENT FORMULA

Engineers organized properties into zones based upon proximity to the planned new roadways. **Zones A and B** included properties that shared street frontage with the new roadways. **Zone C** included other properties within the benefit district and adjacent to Zone A/B properties. 75% of total LID cost (\$1,083,000) was assessed to zones A & B while the remaining 25% (\$361,000) was assessed to zone C properties. Those totals were dispersed among the properties in the zones based upon their share of their zone's anticipated future assessed land value.

Case Study Summary

- ◆ Total Project Cost: **\$8,000,000**
 - LID assessment: **\$1.444 million**
 - Happy Valley and Clackamas County Joint Transportation System Development Charge: **\$4.7 million**
 - Clackamas County Countywide Transportation System Development Charge: **\$1.3 million**
 - City of Happy Valley: **\$500,000**
- ◆ LID boundary included 272 buildable acres and 27 affected properties
- ◆ Cost to properties: **\$3,460 to \$318,607 per assessment**

	2003	2015
Total Assessed Value (2015 \$)	\$88 million	\$345 million



Figure A-LID Project Area



Figure B-Pedestrian Improvements on SE 157th

SECTION IV: IMPLEMENTATION STRATEGIES

This section is intended to provide recommended techniques and strategies to consider and adopt as part of a local LID ordinance.

A. MEASURING THE BENEFIT OF AN LID

Before undertaking an LID, the city should ensure that the project provides specific value enhancement for surrounding properties. Because benefits can vary widely between properties and perception (i.e. a paving project which mitigates ambient dust), the city should strive to use metrics which are as consistent, quantifiable and objective as possible. Additionally, the anticipated cost of the LID must be exceeded by the benefits. Some methods of benefit measurement include:

Transportation Projects:

- ✓ Increase to property value
- ✓ Expected increase in vehicle or person trips

Sewer and Water Projects:

- ✓ Expected increase in buildable lots
- ✓ Existing or potential increase in connections

Stormwater Projects:

- ✓ Net increase in impervious area for existing or new construction

B. ENGINEER'S REPORT

The City should consider requiring the following elements in their LID-required engineer's report

1. A full description of the project and its boundaries
2. A description of each parcel benefited from the project including the name of the owner
3. An estimated project cost
4. Estimated costs to each property.

C. TRANSPORTATION PROJECT EVALUATION CRITERIA

It is important for the city to carefully consider a council-initiated LID using such criteria as the following

- ✓ The percentage of impacted properties subject to non-remonstrance agreements
- ✓ Health and safety benefits to the city
- ✓ Ability to leverage alternative methods of funding from existing sources
- ✓ Potential for non-local grant funding
- ✓ Overall city-wide benefits (e.g. economic, travel time savings, fiscal)
- ✓ Consistency with state goals in city comprehensive plan
- ✓ Priority of the project per adopted public facility or capital improvement plans
- ✓ Potential return on investment and risk
- ✓ Available funds or bonding capacity in case of the need for bonded indebtedness

D. ELIGIBILITY OF TRANSPORTATION PROJECTS FOR OUTSIDE FUNDING

When an LID project involves a collector or arterial roadway, it is likely that the benefit of that improvement will extend beyond the zone of benefit. In such cases, an LID should be viewed as an ancillary funding source which can be used to match other local and non-local funding sources. In addition, if such a project is on the City's Transportation System Plan (TSP) or another such plan, those documents may provide guidance regarding the use of other identified funding sources for specific transportation facility improvements.

E. USE OF NON-REMONSTRANCE AGREEMENTS IN LIEU OF REQUIRING TRANSPORTATION IMPROVEMENTS

The use of non-remonstrance agreements are most important when the following conditions apply:

- ✓ A lot is subject to future annexation by the city and/or within an urban growth management area.
- ✓ A lot is within an area designated for investment by the city, such as an urban renewal area.
- ✓ Development of a lot is expected to utilize at least 10% of remaining capacity on an existing transportation facility on a collector or arterial road or intersection as identified in a TSP.
- ✓ Development of a lot is dependent upon the development of a future collector or arterial or sewer improvement identified in a local plan.
- ✓ Upon direction of the city engineer, manager, community development director or city council.

F. ADMINISTRATION OF AN LID

A city will incur non-project-related costs while administering an LID including financing, collections and administration. These costs should be included in the cost estimate within the engineer's report, they are typically estimated as a 2-5% addition to the total LID cost. In the case that city staff time is inadequate to administer either the billing or financing elements of an LID, the provision of a third party contractor can be added to the LID assessment.

G. RISK MITIGATION WHEN FINANCING LIDS

The City must carefully consider the risks of an economic downturn or chronic late payments by property owners. Some strategies to mitigate risk to the City are as follows:

- ✓ Consider using LIDs as a “last dollar” for projects or for small projects (LIDs of less than \$100,000)
- ✓ For single-developer LIDs, require the developer to maintain performance bonds in escrow that are equal to 1 year of LID payments
- ✓ Limit LID costs to no more than 1/2 of land value after improvements.
- ✓ Ensure there are no pre-existing property liens on lots within the LID benefit zone
- ✓ Ensure adequate debt coverage levels are built into LID assessments.

H. STAKEHOLDER OUTREACH TECHNIQUES

LIDs are politically sensitive endeavors for staff and elected officials alike. The high cost of assessments against individual home owners can generate ill will towards the city, especially when the benefits of an LID are not adequately explained to those individuals. While completely obviating this reaction is not likely, by exceeding state public outreach requirements, staff can mitigate backlash to the formation of an LID. Some such actions include:

- ◆ **A clear and objective LID ordinance:** City code should serve as a predictor of the City’s actions when implementing an LID. Further direction on this can be found in the following section.
- ◆ **Seek early input:** Staff should reach out to impacted property owners through flyers, open houses and direct mailings early, before the initial engineer’s report is published. In doing this early, staff can not only gain the input of local land owners and mitigate areas of concern within the LID but discuss the benefits of the project all before staff time is used to draft substantive reports.
- ◆ **Interim Input:** Once cost and benefit estimates are finalized in the engineer’s report, staff should hold an informational meeting with impacted property owners and allow for a public comment period. During that period, all public comments should be recorded and made part of the record for consideration by city council when the LID is advanced for adoption.
- ◆ **Discussion in the instance that assessment is higher than anticipated:** In the case that the project costs overrun estimates significantly, staff should schedule additional public meetings to discuss why the costs (and individual assessments) have increased. It is important that the City operate in a transparent manner and consider identifying additional funding sources in order to defray costs to individual land owners.

SECTION V: MODEL CODE

The attached draft Newport LID policy and code recommendations are based on a survey of LID codes and comprehensive plans from other municipalities, and input from the TAC, Newport city staff, Newport's Planning Commission and experienced LID practitioners. The resulting recommendations are intended to provide a set of "best practices" for Newport and other cities.

A. COMPREHENSIVE PLAN AMENDMENTS

The following revised comprehensive plan amendments (included in Appendix B) have been identified to provide consistent governance when funding and implementing public facility improvements.

Policy 6A. Initiating Local Improvement Districts (LIDs) by Petition

Policy 6A recommends that city leaders only consider an LID if adequate financial resources are present to cover costs such as the Engineer's Report and required public outreach. 6A continues by further instructing Newport's decision-makers to expend those resources if it meets feasibility criteria such as the level of existing non-remonstrance agreements and the likelihood that the LID will be "self-financing." Further, the policy includes prioritization techniques that provide city staff and local officials' direction when prioritizing multiple LIDs.

Policy 6B. Initiating Local Improvement Districts (LIDs) by City Resolution

Policy 6B instructs Newport's leaders on how they might approach a council-initiated LID. The policy calls on staff and the City Council to consider the following factors prior to expending resources on the Engineer's Report:

- ✓ Consistency with adopted plans
- ✓ Will the improvement address existing deficient infrastructure that is chronically failing.
- ✓ Capital cost of the improvement.
- ✓ Project cost contingencies and related construction risk factors (need to acquire new public right-of-way, unique construction challenges, environmental issues, etc.)
- ✓ Nature of the area of benefit (local, community, state), and the potential availability of non-LID funding sources (state/federal grants, local urban renewal funds, other local funds).
- ✓ The amount of potential non-LID funding that is expected to be leveraged by the LID.
- ✓ Percentage of properties within the benefit area that have prerecorded non-remonstrance agreements or are subject to petition in favor of the LID. Preexisting non-remonstrance agreements or petitions must be in place for at least 50% or more of the area of benefit.

Policy 6C. Initiating Local Improvement Districts (LIDs) in General

Policy 6C addresses numerous additional considerations, making explicit prioritization criteria and additional thresholds for whether the city should proceed with the process.

- ◆ When considering multiple LIDs, priority shall be given to LID(s) that address an “emergency” that has been declared by city council to be a threat to the health and safety to Newport residents and visitors, or to address chronically failing infrastructure.
- ◆ An LID must have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans regardless of the property-owners’ repayment.
- ◆ The aggregate assessment amount within a prospective LID should be less than one-third the existing market value of properties within the district.
- ◆ The cost of completing the Engineer’s Report shall be included in the total LID assessment. The City shall update its fee schedule to include a non-refundable LID Application Fee to be paid by LID petitioner(s) for petition-initiated LIDs.
- ◆ In addition to LIDs, in order to maintain public facility service levels, the city may use various means to finance, in whole or in part, improvements to public services in a manner that is consistent with public facility master plans, and adopted city goals and policies. This includes but is not limited to consideration of federal or state grants, sewer or other types of service charges, urban renewal funds, revenue or general obligation bonds, and reimbursement districts.

B. CITY CODE AMENDMENTS

While the comprehensive plan language will provide policy direction regarding how a city should pursue an LID, the city code and ordinance provides the legal and regulatory framework around which the LID will be adopted. LID legislation must provide clarity for the city and citizens to ensure that implementation is predictable. The draft LID code amendments are available in their entirety in Appendix C. Highlights of specific recommended changes are discussed below.

- ◆ Revisions to the code begin with the inclusion of a “definitions” section. Such a section is included in the LID ordinance of numerous cities. This section builds an understanding between the city and citizens of important terminology to be used throughout the following legislation.
- ◆ Additions were made to the “initiation” section of the code add conditions under which the city can pursue an LID. This section enumerates six conditions ranging from health and safety concerns to consistency with city plans. This section was designed to provide Newport’s elected leaders with clear direction related to when an LID is an appropriate funding mechanism.
- ◆ Based upon a survey of LID ordinances from across Oregon, additional levels of public engagement are recommended at the outset of the LID formation process. This is intended to better understand the level of property owner support prior to expending significant levels of staff time or resources to advance the LID for adoption.
- ◆ Additional direction is provided regarding public hearing notices. Additionally, this section provides the city council the ability to reopen the hearing on district formation in the case that it is halted by petitions against the LID. This section also enumerates the actions to be taken by council and staff upon district formation such as the establishment of an account for LID funds and a framework for project completion.
- ◆ Input from the TAC and Planning Commission indicated an interest in how an LID might be funded initially by the city. With the help of city staff, funding mechanisms ranging from bonded debt to fund transfers were identified as potential sources of initial funding for LIDs.

Additionally, this section requires the city to hold a debt reserve equal to 12 months of combined interest and principal obligations to prepare the city in case property owners are unable to make payments on their assessments.

- ◆ Based upon the input of Newport's city staff, a section of code relating to the method of assessment was added. A recommended benefit allocation method (**Exhibit 2.1**) was included in the code amendments to provide clear and objective guidance on how to select assessment methods. The purpose of this section is to discuss appropriate methods of cost assessment based upon the type of project. Additionally, this section requires city council to consider methods based upon perceived equity.

SECTION VII: SUMMARY

This LID Implementation Strategy documents the recommended policies and local LID code that is necessary to conserve city resources, staff time and limit risk when considering or adopting a new LID. The findings and recommendations, while specific to the City of Newport, are intended to provide guidance to any community that desires to create a clear, objective and consistent approach to LID formations.

While LIDs must be crafted in a manner that reflects the unique costs and benefits of a specific local improvement, they can provide a “win-win” result for the public and private sectors. In recognition of limited staff and financial resources available by small and medium size jurisdictions, this document provides a policy framework that addresses the issues, options and best practices that should be addressed before proceeding with LID projects.

In practice, each LID is unique. However, a consistent approach to evaluating LID projects and developing equitable cost-benefit allocation methods can improve any LIDs chance for success and support by affected property owners.

When coupled with other available funding sources, such as urban renewal funds, water and sewer enterprise funds, general funds and system development charge revenues, LIDs can result in optimizing limited resources available to pay for public facilities in targeted redevelopment areas. This document explores and recommends the ways and means of advancing LIDs in Oregon so that communities can adequately fund planned public facility investments in a sustainable and equitable manner.

TECHNICAL APPENDIX

APPENDIX A: LID ISSUES AND BEST PRACTICES FINDINGS

Issue	Best Practices	Discussion
A. LID Formation	<p>Prior to the LID formation, local governments should have policies and procedures in place to ensure that they can address issues proactively such as the following:</p> <ul style="list-style-type: none"> · Formulate different policies for different types of LIDs (e.g. residential, commercial, developer). · Construct a screening method that stipulates criteria all properties/property owners must pass for LID formation. · Establish risk mitigation measures (in the event of an economic downturn or delinquent LID payments) that ensure adequate revenues will be forthcoming to meet debt service obligations. 	<p>A single family residential neighborhood requiring a sidewalk should have different LID formation requirements than a single commercial developer in a greenfield. As such, governments should explore the differences and consider policies based on those differences.</p> <p>A LID formation pre-screening checklist which identifies: property parcel ID number, property owner contacts, liens on the property, assessed and market valuation levels, and other items allows the local government to better evaluate if the LID assessment is financially viable.</p>
B. LID Assessments	<p>Establish policies for recalculating LID benefits if final LID assessments significantly exceed initial assessments.</p> <p>Consider placing liens on properties only after the final assessment and construction occurs.</p>	<p>Additional public outreach should be conducted if the final assessment is significantly higher than the initial assessment.</p> <p>Placing the lien on properties after the final assessment allows for one point in time at which property owners can challenge the LID with a writ of review. This approach enables costs to be included in the LID assessment from project inception to completion.</p>
C. Potential Funding Sources to Match LIDs	<p>Establish policies that determine how and when to match local LID assessments with other governmental funds—depending upon the size of the capital project.</p> <p>For large projects (e.g., over \$100,000) LIDs should be considered as the final source of “gap” funding.</p>	<p>LID projects inherently have some general benefit along with the special benefit attributed to the property owners. If there is some general community wide benefit, then the local government could justify the use of capital funds or general funds to match LID assessments.</p> <p>For example, see the City of Ashland’s LID resolution which includes a matrix that stipulates the amount of non-LID funding the City will commit for specific types of LID projects. For example, the city will pay 50 percent of the total costs of sidewalks along arterial roads, and LIDs will be used for the remaining 50 percent of the cost.</p>
D. Administrative Costs/Staffing	<p>Establish a policy to include all administrative costs such as project management, billing, and auditing in the final LID assessment.</p> <p>If the property owner opts for financing their assessments over time, then additional fees and interest charges should be added to their individual assessment.</p>	<p>Most cities have a broad provision stating that property owners in the LID will bear all costs.</p> <p>There are many ways local governments ensure that all administrative costs are included in the LID assessment. The City of Springfield stipulates an assessment service fee that covers administrative costs (6.2%). Portland has a set auditor’s fee (.438%) along with a monthly billing fee and project management charges.</p>
E. Consideration of Pre-Existing Non-Remonstrance Agreements	<p>Non-remonstrance agreements should imply a quid pro quo benefit to the property that is slated to be assessed by a future LID.</p>	<p>Non-remonstrance agreements have been rejected in court if there is no benefit for the property owner or if the agreement is outdated.</p> <p>Non-remonstrance agreements are not a reflection of property owner support for a future unspecified LID assessment. However, they can provide a local government with the political will to implement an LID and advance finance a share of the capital project cost.</p>

Appendix A (continued)

Issue	Best Practices	Discussion
F. Measures of Determining Benefit to Properties	<p>It is important to avoid assessing properties in excess of their marketable value (before or after the improvement is made). State law provides leeway in benefit apportionment which the local government should use and pragmatically approach every LID project.</p> <p>It is considered good practice to establish a maximum cap on LID assessments, either project wide or property specific.</p> <p>Consider establishing zones of benefit within a LID district to apportion benefit between equitably among property owners.</p> <p>Consider multiple alternatives for apportioning LID benefits</p>	<p>There are multiple ways to establish a LID assessment limit on properties. Portland uses a property value to LID assessment ratio cap (2:1). Ashland places a maximum limit on a LID assessment (not exceed \$5,138 per lot in 2006).</p> <p>Persons interviewed recommended that the property value (Market value) to LID assessment ratio should range from 2:1 to 3:1.</p> <p>Avoid situations that result in one property owner agreeing to pay for another's LID assessment. In the case of Keizer, one property owner agreed to pay the LID assessment of another. This shows that the benefit was not correctly apportioned to the lots that stand to have the most benefit.</p> <p>Zones of benefit within a LID project can make LIDs more equitable and acceptable to property owners.</p>
G. Undeveloped Land LIDs	<p>A fiscally conservative practice with vacant land LIDs is to ensure that collective assessments do not exceed the estimated future market value of the land (before development occurs) once the public facility improvements are in place.</p>	<p>Undeveloped vacant land LIDs are unique in that LID assessments may be greater than the current value of the property.</p>
H. Single Developer LIDs	<p>Establish a financial screening checklist and conduct additional due diligence for proposed single developer LIDs. Considerations should include the past history of the developer, size of the development, existing loans and liens on the property, and credit worthiness of the developer.</p>	<p>Single developer LIDs pose a high risk for the local government because of the potential for default. The government should consider the type of development, the developer's financial situation, and consider hiring an independent financial advisor to assess the viability of the project.</p>
I. Properties and Property Owners Affected	<p>Consider requiring that LID liens be paid in full before transference of property.</p> <p>For large assessments (over \$10,000 per property), consider requiring a reserve fund (e.g., set aside funding equal to 6 months of debt service) to be established if the property owners opt to finance their assessment over time.</p> <p>Local governments can also establish a special payment program available for low-income property owners in a LID (details). For example, a local government can extend the repayment period, reduce the interest rate charged on payments, or defer payments.</p>	<p>The local government should examine tools to insulate the City from financial risk prior to incurring public debt.</p> <p>Gresham requires the LID assessment paid in full before the transference of property per municipal code.</p> <p>Many cities (Portland, Milwaukie, Springfield, etc.) have a low income payment program to make LID payments more equitable for low income households. The definition of low income is dependent on local government resolution and the benefits vary by jurisdiction.</p>
J. Public Involvement	<p>Ensure the public is involved in the LID formation process at every step with transparent and clear communication.</p> <p>Require the LID administrator to respond to all LID questions in writing.</p> <p>Create a policy stipulating the amount of opposition needed to stop the LID formation process (e.g., if 51% or more of affected properties sign a petition against the LID then the formation should stop)</p> <p>Create a policy for the public to initiate LIDs through a petition process.</p>	<p>Public support and input is a keystone to a successful LID. Without it, the City is likely to face many obstacles in the LID formation.</p> <p>Responding to non-remonstrance agreements serves two purposes: increasing public engagement in LID formation and allowing the local government to demonstrate special benefit on the record in the case of a court challenge.</p> <p>The local government should stipulate a percent of property owners that must remonstrate for a LID formation to halt because state law is relatively open in this regard. Local governments can include a provision to continue the LID in spite of remonstrance such as emergencies or for sidewalks.</p>

Appendix A (continued)

Issue	Best Practices	Discussion
K. LID Financing	<p>Charge an interest rate high enough to account for all borrowing costs and the risk of default. Conduct a cash flow analysis to ensure all financing requirements and fiscal policies are met.</p> <p>Consult with bonding counsel prior to debt issuance.</p> <p>Consider early payments by property owners in the context of debt requirements (call penalties).</p>	<p>The local government should consider LID financing risk in the context of defaults and market interest rates.</p> <p>If debt has penalties on early repayment, the local government should consider investing early payoffs by property owners to cover financing costs.</p>
L. System Development Charges for LIDs	<p>Consider providing SDC credits for LID projects when the new project adds capacity on a qualified public improvement (ORS 223.297-223.314).</p>	<p>Providing SDC credits for LID projects assists developers in constructing public facilities (practice used by the city of Gresham)</p>
M. LID Implementation	<p>As part of the LID implementing resolution, identify a construction period that is expected; and include a sunset provision if no construction occurs within the stated timeframe.</p>	<p>In Tigard, the City placed a lien on properties after the initial assessment but because of the Great Recession was unable to construct the improvement. The property owners were unable to sell their property because of the lien placed on the properties, yet no public improvements were made. The City eventually revisited and dissolved the LID. A construction timeframe and sunset would have prevented this issue.</p>

APPENDIX B: DRAFT POLICY AMENDMENTS

APPENDIX C: DRAFT NEWPORT LID ORDINANCE



Local Improvement District Frequently Asked Questions

This paper provides information for property owners about Local Improvement Districts (LID) that are used to construct new or refurbished public facility improvements.

What is an LID?

A Local Improvement District is a special public improvement area created under state statutes (primarily ORS 223.399) and local ordinance. This allows for public financing of public facility improvement projects that benefit private property. The eligible category of public improvements is quite broad. LIDs are typically used to install streets, sidewalks, sanitary sewer lines, water lines, and/or storm drainage facilities.

Expenses included in LID assessments include construction payments, engineering, construction management costs, and any financing or administration costs. When the total costs are tabulated, they are divided by the basis of the assessments as defined by the Engineer's Report, which considers each property's equitable cost share based on the benefit it receives and the chose cost-allocation method.

Why is my property included in the LID?

For a property to be included in an LID, it must receive some benefit from the project. For example, the benefits of a neighborhood street generally accrue to those properties served along the abutting street, while the benefits of a sanitary trunk line or storm drainage facility will accrue to the entire area that it serves, not just abutting properties.

The most typical benefits received by properties within an LID include some level of: appreciation in property value, improved access, enhanced safety, water or sewer system access, reduced local flooding risk, increased site marketability or development potential, improved livability and better air quality.

What is the Process for Forming an LID?

There are two ways that an LID can be formed.

1. The council, by motion or on petition of the property owners benefited by the proposed public improvement, may direct that an Engineer's Report be prepared to assist in determining whether a LID should be formed to pay all or part of identified public improvements.
2. In order to form an LID through private petition, a minimum of 75 percent of the property owners (as measured by the area of property owned by properties within the LID) must petition requesting the LID be formed by the City to construct a project.

How can a Developer form an LID?

A developer that needs public facilities, such as roads or water and sewer trunk lines, as part of a development in the City may desire to form an LID. The developer would be responsible for circulating a petition and obtaining signatures from property owners in the proposed LID area. Signing the petition indicates support for the improvement and for using an LID to finance the project. After a petition is submitted to the City Recorder, City staff will determine if the LID meets the required 75% threshold, and if it does, will present the petition to the City Council, which can request staff to prepare an Engineer's Report.

What is included in the Engineer's Report to form an LID?

The Engineer's report describes the construction project and provides: a description of the benefit(s) to the affected area; list of tax lots in the LID; cost estimates; a recommended method of assessment; an estimated cost allocation to the benefitted properties; and a map of the LID boundary. Methods of assessment often include linear frontage abutting the improvement, land area, number of sewer or water connections, impervious surface area, or other measures.

If the Engineer's Report is accepted by City Council resolution and less than two-thirds (66%) of the LID property owners object to the LID, the City Council may approve the formation of the LID and direct staff to have detailed engineering plans prepared. The project may then be advertised for final engineering and construction bids. If these bids are within 10 percent of the Engineer's Report cost estimate, the project can continue and is awarded to the lowest bidder.

At the conclusion of construction, the total costs of the project are tabulated. A public hearing is held to ensure that the final assessment to each property is based on the actual cost of the project and in accordance with the apportionment method contained in the Engineer's Report. Objections to the assessments are heard by the City Council.

Will there be opportunities for the affected property owners to comment on the LID?

Yes, the property owners within an LID will be notified by the City as the Engineer's Report is being drafted. When the Engineer's report is presented to the City Council with a Resolution of Intent to Create an LID, the public can send comments to the City Recorder by mail, or testify at public meetings or hearings. The City Council then accepts, requests modifications, or rejects the Engineer's Report.

If the Engineer's Report is accepted, a public hearing will be set to consider any objections to the project. Notice of the public hearing is published, and objections are heard and considered.

How Would a Property Owner Object To a Proposed LID?

If two-thirds (66%) of the property owners within the LID object to its formation by submitting written testimony to the City Recorder, the City Council must discontinue further consideration of the LID for at least six months. At the end of six months, the project may be reconsidered.

This six month delay provision does not apply if the council unanimously declares the LID improvement necessary because of an emergency or to remedy infrastructure in chronic disrepair.

What are my LID assessment payment options?

Within 10 days after the effective date of the resolution levying the assessments, the City shall send by first-class mail to the owner of the assessed property a notice containing the following information:

- The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed;
- A statement that the property owner may request to pay the LID assessment in installments; and
- A statement that the entire amount of the assessment is due within 30 days of the date of the notice, and if unpaid on that date will accrue interest and subject the property to foreclosure.

The property owner may elect to establish a payment schedule that stretches out the payment over a period of time with payments due every 6 months. The normal payment period is 10 years. The interest rate is based on the Oregon Bond Index plus 2 percent, and interest is computed semi-annually on the unpaid balance. Payment in full for the outstanding balance of the assessment can be made at any time without penalty.

How will the LID affect my property if it is sold?

A lien is placed against the property until the LID assessment is paid off. The entire amount of principal and accrued interest shall be payable on any sale of the property or change in its boundaries. If payments are not made, the City can foreclose upon its lien to collect the outstanding amount owed.

Who can I contact with additional questions?

You can contact the City of Newport Public Works Department with questions regarding LIDs at: City of Newport, 169 SW Coast Highway, Newport, OR 97365 ph: 541.574.3366